



**U.S. DEPARTMENT OF JUSTICE**  
Antitrust Division

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May 14, 2014

Ex Parte

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269

Dear Ms. Dortch:

In response to the request from Ms. Ruth Milkman, Chief of Staff to the Chairman, and pursuant to 47 C.F.R. § 1.1204(a)(10), the Antitrust Division of the Department of Justice submits this letter for inclusion in the record in the above-captioned proceeding.

On April 11, 2013, the Department submitted an ex parte comment in this proceeding. The comment explained the Department's view that rules that ensure the smaller nationwide wireless networks, which currently lack substantial low-frequency spectrum, have an opportunity to acquire such spectrum could improve the competitive dynamic in the wireless market and benefit consumers. The Communications Act specifically requires that in designing auction policies, the Commission promote competition "by avoiding excessive concentration of licenses." *See* 47 U.S.C. § 309(j)(3)(B). Indeed, since the allocation of the very first cellular licenses, the Commission has adopted policies to ensure that concentration of scarce spectrum resources does not rob American consumers of the benefits of robust wireless competition. The Department's comments expressed support for the Commission's efforts to update and maintain those policies to account for today's competitive realities.

I write today to confirm that the Department stands by the views articulated in those April 2013 comments, and that no intervening developments in the industry have affected the compelling economic rationale for well-defined, competition-focused rules concerning acquisitions by the most spectrum-rich providers.

Marlene H. Dortch

May 14, 2014

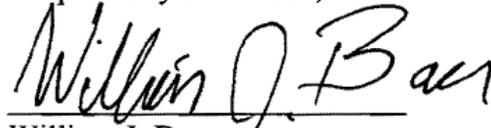
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As the comments explained, without clear and meaningful rules, spectrum auctions may lead to inefficient and anticompetitive allocations of our nation's spectrum resources. Our prior comments described at length the economic theory underlying a concern that the "foreclosure value" of spectrum may cause harm to competition and consumers. Spectrum auction rules are a neutral means of ensuring auction participants are unable to implement such anticompetitive strategies. A foreclosure strategy is not merely theoretical – specific facts about the wireless industry, such as high market concentration, high margins, and scarce critical inputs, make anticompetitive foreclosure more likely. Therefore, the Department believes it is essential to maintain vigilance against any lessening of the intensity of competitive forces, or reduction in the number of effective competitors, in the wireless industry.

In particular, low-frequency spectrum remains a competitively critical input. Low-frequency spectrum also remains especially scarce. As many commenters have noted, and as the Department's own comments acknowledged, for some purposes, such as expanding capacity in dense urban areas, high-frequency spectrum can be just as suitable as low-frequency spectrum. However, some aspects of wireless coverage and quality, such as strong rural or in-building coverage, simply cannot be provided as cost-effectively without low-frequency spectrum. If the largest providers are able to use a foreclosure strategy, they will be able to exercise a degree of market power, at least in certain areas, due to their networks' superior coverage characteristics.

As always, the Department looks forward to continuing to work with the Commission to protect and promote innovation, competition, and consumers in this vitally important industry.

Respectfully submitted,

A handwritten signature in black ink that reads "William J. Baer". The signature is written in a cursive style with a horizontal line underneath the name.

William J. Baer  
Assistant Attorney General